

China - Regulations on the Examination and Approval of Foreign-Funded Enterprises Serving as Agents for International Cargo Transport, 1996

MOFTEC

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Regulations on the Examination and Approval of Foreign-Funded Enterprises Serving as Agents for International Cargo Transport (Promulgated by the Ministry of Foreign Trade and Economic Cooperation on September 9, 1996)

Article 1

These Regulations have been formulated with a view to standardizing the work to examine and approve foreign-funded enterprises serving as agents for international cargo transport, and in accordance with State laws and regulations concerning foreign-funded enterprises and the provisions of the People's Republic of China on the management of international cargo transport agency business.

Article 2

Foreign-funded enterprises serving as agents for international cargo transport designated in these Regulations refer to foreign-funded enterprises which have been established in the form of Sino-foreign joint ventures or cooperative businesses to accept the trust of consignees and consignors of import and export cargo, which, in the name of trustees or in their own names, handle for trustees, international cargo transport and relevant business, and collect service remuneration (hereinafter referred to as foreign-funded international cargo agent enterprises).

Article 3

The Ministry of Foreign Trade and Economic Cooperation of the People's Republic of China (hereinafter referred to as the MOFTEC) shall serve as the managerial department to examine and approve foreign-funded enterprises serving as agents for international cargo transport.

Article 4

Foreign enterprises and companies may establish, in the form of joint ventures and cooperative businesses within the territory of China, foreign-funded enterprises serving as agents for international cargo transport, with Chinese partners in joint ventures and cooperative businesses contributing no less 50 percent to the total investment.

Article 5

In addition to meeting the conditions as prescribed in the Regulations of the People's Republic of China on the Management of International Cargo Transport Agency Business, whoever applies for the establishment of a foreign-funded enterprise serving as

an agent for international cargo transport shall meet the conditions as stipulated in relevant State laws and regulations concerning foreign-funded enterprises and the following conditions as well:

(1) At least one Chinese partner is an enterprise which serves as an agent for international cargo transport or which is a foreign trade enterprise with annual imports and exports exceeding 50 million US dollars. Partners meeting the above conditions shall control the bulk of shares among Chinese partners; Foreign partners shall be enterprises serving as agents for international cargo transport; 12

(2) Chinese and foreign partners shall have a history of at least three years in serving as agents for international cargo transport or in foreign trade business, have operational and managerial personnel and specialized personnel qualified for the business applied for, have a stable cargo source, and have a certain number of cargo transport outlets; 13

(3) Neither Chinese partners nor foreign partners had committed acts against regulations on the said business and had been punished in the three years before the date of their application. 14

Article 6

A water and air transport carrier, as well as an enterprise that may bring unfair competition behaviors to cargo transport agent business shall not serve as a partner to a joint venture. 15

Article 7

Whoever has established an enterprise serving as an agent for international cargo transport that has operated for less than five years may not invest in establishing the second enterprise serving as an agent for international cargo transport. 17

Article 8

The minimum registered capital of a foreign-funded enterprise serving as an agent for international cargo transport shall be one million US dollars. 19

Article 9

With prior approval, foreign-funded enterprises serving as agents for international cargo transport may handle part or all of the following business: 21

(1) Ordering a warehouse and providing warehouse storage service; 23

(2) Supervising cargo loading and unloading, and assembling and opening containers; 24

- (3) International express mail, with the exception of private mail; 25
- (4) Customs declaration, reporting cargo for inspection and checks, and insurance; 26
- (5) Formulating relevant documents, paying transport expenses, making settlements and paying incidental expenses; and 27
- (6) Other kinds of business related to serving as agents for international cargo transport. 28

Article 10 29

With regard to the application for the establishment of a foreign-funded enterprise serving as an agent for international cargo transport, the Chinese partner, in accordance with the procedures as stipulated by State laws and regulations regarding foreign-funded enterprises, shall submit the application document to the department of foreign trade and economic cooperation (the document shall be subject to the joint examination by the foreign investment managerial department and the commercial storage managerial department) of a province, autonomous region, municipality directly under the central government or a city enjoying the provincial status where the foreign-funded enterprise serving as an agent for international cargo transport is set to be established. After the departments grant approval following initial examination, the document shall be submitted to the MOFTEC for examination and approval. 30

In accordance with State laws and regulations concerning foreign investment, the MOFTEC shall, with the prescribed time limit, decide whether to approve or not approve. With regard to those whose applications have been approved, the MOFTEC shall issue the Approval Certificate for a Foreign-Funded Enterprise and Approval Certificate for an Enterprise Serving as an Agent for International Cargo Transport. 31

On the strength of the two certificates issued by the MOFIEC, the Chinese partner shall handle registration procedures with the managerial department for industry and commerce. 32

Article 11 33

The operational duration of a foreign-funded enterprise serving as an agent for international cargo transport shall not exceed 20 years. 34

Article 12 35

After a foreign-funded enterprise serving as an agent for international cargo transport has been in official operation for a full year and after the investments of various partners to a joint venture have arrived, the enterprise may apply for the establishment of branches in other parts of China. Each time when a foreign-funded enterprise serving as an agent for international cargo transport establishes a branch engaged in the business of serving as an agent for international cargo transport, the enterprise shall add 36

120,000 US dollars to its registered capital. The business scope of the branch shall fall within the business scope of the foreign-funded enterprise serving as an agent for international cargo transport, and the parent company shall bear related liabilities.

The application for the establishment of a branch shall first be subject to the initial examination by the economic and trade department of the place where the foreign-funded enterprise serving as an agent for international cargo transport is located. Then opinions of the economic and trade department of the place where the branch is set to be established shall be solicited. After approval is granted, the application shall be submitted to the MOFTEC, which shall carry out examination and approval in accordance with the needs of development

When applying for the establishment of a branch, a foreign-funded enterprise serving as an agent for international cargo transport shall submit the following documents to higher authorities:

(1) The transmitted report by the economic and trade department of the place where the enterprise is located and the letter of comment of the economic and trade department of the place where the branch is set to be established;

(2) The decision of the board of directors on the establishment of the branch and increasing investment;

(3) The agreement on revising the contract or articles of association related to matters concerning increasing investment;

(4) The report on the operation of the enterprise and the reason for the establishment of the branch, as well as feasibility analysis;

(5) The report on verifying the investment of the enterprise; and

(6) Other related documents.

Article 13

These Regulations shall be applicable to enterprises serving as agents for international cargo transport established by companies and enterprises in Hong Kong, Macao and Taiwan.

Article 14

Should foreign-funded enterprises serving as agents for international cargo transport that were established before the promulgation of these Regulations plan to apply for expanding their business scope, establishing branches or extending their joint venture terms, their registered capital shall be subject to the stipulations of these Regulations.

Article 15

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These Regulations shall come into force as of the date of promulgation. The Measures Concerning the Examination and Approval and Administration of International Freight Forwarding Agencies with Foreign Investment promulgated on February 22, 1995 by MOFTEC shall be abolished simultaneously.

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